

**REMARKS**

Receipt of the Office Action mailed June 21, 2007 is acknowledged. Claims 1 and 3-14 have been amended. Support for the amendment to the claims can be found throughout the original disclosure, for example, in claims 2 and 31. Non-elected claims 15-29 have been canceled without prejudice or disclaimer. Claims 2, 30 and 31 have been canceled without prejudice or disclaimer. Upon entry of the amendment, claims 1 and 3-14 will be pending.

Applicants note with appreciation that the Examiner has indicated that claim 7-9 contain allowable subject matter. In view of the foregoing amendment and the reasons set forth below, applicants submit that all pending claims are now allowable.

Claims 1-14 and 30-31 stand rejected under 35 USC § 112, second paragraph. Claims 30 and 31 have been canceled. With respect to claim 1, the recitation of test elements when read in view of the specification is believed to provide adequate structure for the purposes of section 112, second paragraph. With respect to the holders, the removable holder at line 4, includes a recess for holding the test elements per se or test element holders, such as those described in the specification at page 14, lines 3-13. With respect to claims 2 and 4, applicants have corrected claim 4 to provide antecedent basis. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-6, 10, 11 and 13 stand rejected under 35 USC § 102(b) as being anticipated by Clark et al. (US 6,190,617), hereinafter "Clark".

Applicants have amended the claims to more distinctly claim what applicants regards as the invention. As the specification describes, there was a need in the art for a desktop *in vitro* diagnostic analyzer that is capable of automatically performing a wide range of analysis as are capable on mainframe analyzers, such as those described in Clark, and provide the flexibility to execute a variety of operations on patient samples with

a high degree of simplicity and cost effectiveness. See the specification at page 3, lines 10-15.

One solution to achieve such a desktop analyzer is to provide a provide a removable holder having the probe tip dispenser, fluid supply section and test element recess in the same line of travel to intersect the liquid dispense or aspirating station. This minimizes the number of degrees of motion required by the analyzer subsystem, in particular, the liquid dispense and aspirating station. See page 4, line 26 to page 5, line 2. See also page 8, line 23 to page 9, line 2. Applicants respectfully submit that Clark fails to anticipate or render obvious the claimed invention or the advantages that flow therefrom.

Now turning to Clark. The Examiner cites Clark as having "removable holders" shown in Figures 36-42 on carousels 36 and 32. The sample container segments shown in Figures 36-42 are described at columns 48-52. The only elements described as being contained by the sample container segments 600 (Fig. 36) or 626 (Fig. 40) are sample containers 620 and 641, respectively. There is no teaching or suggestion of a probe tip dispenser or test element recess as part of the removable holder in addition to the fluid supply section as claimed. Moreover, there is no teaching or suggestion of having such features in the same line of travel. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 30 and 31 stand rejected under 35 USC § 103(a) as being unpatentable over Clark. This rejection is obviated in view of the cancellation of claims 30 and 31.

Claims 1-14 and 30-31 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 24-26 of co-pending application No. 10/436,537.

In accordance with MPEP 804 (I)(B)(1), applicants request that any requirement for a terminal disclaimer be held in abeyance until one of the applications issues as a patent.

An early and favorable action on the merits are respectfully requested. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 10-0750/CDS0290/TJB.

Respectfully submitted,

/Todd J. Burns/

Todd J. Burns  
Reg. No. 38,011  
Attorney for Applicant(s)

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
(732) 524-1496  
DATE: November 20, 2007